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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

AMANDA CHRISTINE FRIEDMAN,

Defendant and Appellant.

A144365

(Sonoma County
Super. Ct. No. SCR-647847)

Defendant Amanda Christine Friedman was charged with commercial burglary (Pen. Code, § 459),¹ identity theft (§ 530.5, subd. (a)), check forgery (§ 470, subd. (a)), receiving a stolen check (§ 496, subd. (a)), and two prior prison terms (§ 667.5, subd. (b)). Pursuant to a plea agreement, she entered a no-contest plea to the identity theft charge in return for dismissal of the other charges and a three-year sentence of 30 months in custody plus six months on mandatory supervision. Friedman contends the court abused its discretion when it allowed the prosecution to withdraw from an earlier plea agreement because the passage of Proposition 47 required a lesser sentence than the one contemplated in the earlier plea. We conclude that Proposition 47's passage provided a reasonable basis for the court's decision to grant the prosecution's motion to withdraw from the prior agreement and affirm the judgment.

¹ Subsequent statutory references are to the Penal Code.

I. BACKGROUND

According to the probation report, on February 25, 2014, Friedman opened bank accounts in the name of Tracie Penny using a check that was stolen from George Honey and forged in the amount of \$450. Penny had been in jail since December 2013, and reported that she had been unable to secure her belongings when she was arrested. She had her boyfriend retrieve her purse and give it to her father, but her driver's license, social security card, and credit cards were missing. Penny had known Friedman for years "as they were frequent inmates together, but they were never 'good friends,' " and she did not give anyone permission to open bank accounts in her name while she was in jail. On March 13, 2014, a bank fraud investigator reported that the account in Penny's name was overdrawn by \$500.

The probation report stated that Friedman said she was approached by Penny's boyfriend who said he had Penny's permission to sell her identification because she needed money on her books while in custody. Friedman said she "could 'do it' [perpetrate the fraud]" if she could locate a blank check, and someone gave her the check belonging to Honey. She obtained Penny's identification and went to the bank pretending to be her. She gave Penny's boyfriend \$100 from the money she deposited, and returned Penny's identification to him. "[S]he did not know whether Penny was 'okay' with her using her identification or not, but she 'thought' she was because Penny's boyfriend did not appear like he was desperate for money."

On September 23, 2014, the parties executed a plea agreement under which Friedman would plead no contest to receiving stolen property in exchange for dismissal of the other charges at sentencing, and a three-year sentence of 30 months in custody plus six months on mandatory supervision.

On November 4, 2014, the voters enacted Proposition 47, which reduced certain offenses to misdemeanors, including receiving stolen property, but not the identity theft offense that was included in the original charges against Friedman. The prosecution moved to withdraw from the plea agreement on the ground that passage of Proposition 47

deprived it of the benefit of its bargain because the indicated sentence could no longer be imposed for the sole offense Friedman admitted.

After briefing, the court granted the prosecution motion and gave Friedman the option of going to trial, or pleading to a different felony count in the complaint that would yield the three-year felony sentence to which the parties had previously agreed.

Friedman entered a no-contest plea to identity theft, and was sentenced to 30 months in custody and six months of mandatory supervision, as was required by the earlier agreement.

II. DISCUSSION

Permission to withdraw from a plea agreement is reviewed for abuse of discretion. (See *People v. Holmes* (2004) 32 Cal.4th 432, 442–443; see also *People v. Castaneda* (1995) 37 Cal.App.4th 1612, 1617.) Thus, “ ‘as long as there exists a reasonable or even fairly debatable justification, under the law, for the action taken,’ ” the ruling cannot be set aside. (*People v. Clark* (1992) 3 Cal.4th 41, 111.)

As the trial court noted in its order, the prosecution’s motion was supported by the decisions in *People v. Collins* (1978) 21 Cal.3d 208 (*Collins*), and *In re Blessing* (1982) 129 Cal.App.3d 1026 (*Blessing*).

In *Collins*, the defendant was charged with 15 felonies, and pursuant to a plea agreement, pleaded guilty to one of them in return for dismissal of the other 14. While criminal proceedings were suspended and the defendant was hospitalized as a mentally disordered sex offender, the Legislature amended the statute defining the crime supporting his conviction. Under the amended statute, the conduct he admitted was no longer criminal. The court reversed the judgment of conviction, but authorized the prosecution to reinstate the dismissed counts with the proviso that the defendant could not be sentenced to a longer term than the one provided for the crime he admitted at the time he entered his guilty plea.

Collins held that “[w]hen either the prosecution or the defendant is deprived of benefits for which it has bargained, corresponding relief will lie from concessions made. . . . [¶] . . . [¶] The state, in entering a plea bargain, generally contemplates a

certain ultimate result; integral to its bargain is the defendant's vulnerability to a term of punishment. . . . [¶] . . . The intervening act of the Legislature in decriminalizing the conduct for which [the defendant] was convicted . . . destroys a fundamental assumption underlying the plea bargain—that defendant would be vulnerable to a term of imprisonment. The state may therefore seek to reestablish defendant's vulnerability by reviving the counts dismissed.” (*Collins, supra*, 21 Cal.3d at pp. 214–215.) The court's disposition “substantially restores the agreement previously negotiated. It permits the defendant to realize the benefits he derived from the plea bargaining agreement, while the People also receive approximately that for which they bargained.” (*Id.* at p. 217.)

Blessing followed *Collins* and reached a similar result. In *Blessing*, the parties entered into a plea agreement that provided for a sentence of 16 1/3 years in exchange for dismissal of additional charges, and imposition of a concurrent sentence in another case. Thereafter, our Supreme Court invalidated an enhancement that applied to most of the offenses the defendant admitted. “ ‘ . . . [I]n computing one's sentence under a plea bargain, even though agreed by the parties, the court may not give effect to an enhancement unauthorized by law.’ ” (*Blessing, supra*, 129 Cal.App.3d at p. 1030.) In the wake of the Supreme Court decision, the defendant could be sentenced to a term of only 12 1/3 years, not the agreed upon 16 1/3. This change in the law “drastically and fundamentally altered the character of the negotiated disposition. Thus, the People are entitled to withdraw therefrom and have the dismissed counts revived, if they so desire. (*People v. Collins, supra*, [21 Cal.3d] at p. 215.)” (*Id.* at p. 1031.) But “[i]n no event may any resentencing proceeding result in an aggregate term of imprisonment in excess of the 16 1/3 years contemplated by the negotiated disposition and initially imposed by the sentencing court.” (*Ibid.*)

Likewise here, the passage of Proposition 47 deprived the prosecution of the benefit of its bargain because Friedman could not be sentenced to the three-year term contemplated in the agreement. The prosecution was entitled to withdraw from the agreement, provided Friedman suffered no adverse consequences due to her entry into that agreement. (*People v. Kim* (2011) 193 Cal.App.4th 1355, 1360 [sentencing court

may disapprove a plea agreement so long as the parties can be restored to their original positions[.]) The court properly gave Friedman the option of accepting an agreement resulting in the sentence to which she had previously agreed or going to trial. The court had reasonable grounds to grant the motion and there was no abuse of discretion.

Friedman contends that the court did not make an “informed decision” on the original plea because it “did not consider, may not have read and may not have even received the probation report before deciding to disapprove the plea under section 1192.5.” (§ 1192.5 [court may withdraw its approval of a plea “in the light of further consideration of the matter”].) The probation report was stamped received by the court in November 2014, before the court’s January ruling on the prosecution’s motion, but is not file stamped until February. Friedman argues that if the court had considered the probation report it would have realized that the identity theft charge, the only remaining felony count after Proposition 47, “was the weakest in the case. Unlike with the other three counts, [Friedman] advanced a defense to this charge in her discussion with the probation officer, stating that she thought she was helping Tracie Penny’s boyfriend consummate a scheme that had originated with Penny. These statements merit credence because they were made in anticipation of sentencing on receiving stolen property, not after the later plea to identity theft when [she] might have had an incentive to minimize her culpability. Further, [her] story dovetails with Penny’s statement to the police that she had given her purse to her boyfriend.” According to Friedman, the evidence of her innocence on the identity theft charge was so compelling that the prosecution could have had no “greater expectancy of punishment in the post-Proposition 47 world” than “a one-year misdemeanor sentence.” She maintains that the court erroneously failed to consider “whether anything more than a misdemeanor realistically remained of the prosecution’s case after Proposition 47.”

This argument fails for a number of reasons. First and contrary to Friedman’s suggestion, the court did not violate section 1192.5. Before granting the motion to withdraw the original plea, the court gave the matter “further consideration” as required by the statute, and went so far as to file a six-page written order explaining its decision.

Before accepting Friedman's no contest plea to the identity theft charge, it confirmed with the defense, as required by the statute, that there was a factual basis for the plea. Second, even assuming that the court erroneously failed to consider the probation report before ruling on the prosecution's motion, any error was harmless. Contrary to Friedman's claim, the report did not provide such strong evidence that she was innocent of identity theft that the court would have realized upon reading it that this was only a misdemeanor case. If Friedman was so confident of her defense to the identity theft charge, the court's ruling left her free to go to trial. Third, Friedman's argument establishes at most that the court might have had a reasonable ground for denying the prosecution's motion. However, we have determined that the court had a reasonable basis for granting the motion, and that conclusion is dispositive of our review for an abuse of discretion.

III. DISPOSITION

The judgment is affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.

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